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**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 SOUTHERN DIVISION**

THE NEXT SOLUTIONS, INC., a  
 Delaware corporation, d/b/a THE NEXT UP  
 and THENEXTUP.COM,

Plaintiff,

v.

PROSOFTWARE TECHNOLOGIES, LLC,  
 a Washington limited liability company  
 d/b/a SKYUPSYSTEM.COM; JATINDER  
 "JAY" KHAIRA, an individual; QAZAFI  
 "KAZ" QURESHI, an individual; and  
 DOES 1-10, inclusive,

Defendants.

Case No. SACV12-02147 BRO (JPR)  
 Hon. Beverly Reid O'Connell  
 Hon. Jean P. Rosenbluth

**AMENDED STIPULATION AND  
 ORDER RE: PROTECTIVE  
 ORDER**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff THE NEXT SOLUTIONS, INC., d/b/a THE NEXT UP and THENEXTUP.COM (“Plaintiff”) and Defendants PROSOFTWARE TECHNOLOGIES, LLC, d/b/a SKYUPSYSTEM.COM; JATINDER “JAY” KHAIRA; QAZAFI “KAZ” QURESHI (“Defendants”), through counsel undersigned, jointly submit this Amended Stipulated Protective Order to govern the handling of information and materials produced in the course of discovery or filed with the Court in this action;

### GOOD CAUSE STATEMENT

It is the intent of the parties and the Court that information will not be designated as confidential for tactical reasons in this case and that nothing be so designated without a good faith belief that there is good cause why it should not be part of the public record of this case. Generally, information and documents shall be designated where the Designating Party believes is proprietary, confidential, and/or is trade secret, and which the Designating Party would not publically release. Examples of confidential information that the parties may seek to protect from unrestricted or unprotected disclosure include:

- a) Information that is the subject of a non-disclosure or confidentiality agreement or obligation;
- b) The names, or other information tending to reveal the identity of a party’s supplier, designer, distributor, or customer;
- c) Agreements with third-parties, including license agreements, distributor agreements, manufacturing agreements, design agreements, development agreements, supply agreements, sales agreements, or service agreements;
- d) Research and development information;
- e) Proprietary engineering or technical information, including product design, manufacturing techniques, processing information, drawings, memoranda and reports;
- f) Information related to budgets, sales, profits, costs, margins, product pricing, or other internal financial/accounting information, including non-public

information related to financial condition or performance and income or other non-public tax information;

- g) Information related to internal operations including personnel information;
- h) Information related to past, current and future product development;
- i) Information related to past, current and future market analyses and business and marketing development, including plans, strategies, forecasts and competition; and,
- j) Trade secrets (as defined by the jurisdiction in which the information is located).

Unrestricted or unprotected disclosure of such confidential technical, commercial or personal information would result in prejudice or harm to the producing party by revealing the producing party's competitive confidential information, which has been developed at the expense of the producing party and which represents valuable tangible and intangible assets of that party. Additionally, privacy interests must be safeguarded. Accordingly, the parties respectfully submit that there is good cause for the entry of this Protective Order.

### **PROTECTIVE ORDER**

#### **1. Definitions.**

- a.** The term "CONFIDENTIAL" shall mean and include documents, portions of documents, answers to interrogatories, responses to requests for admission, depositions, affidavits, expert reports, legal briefs or memoranda, and information derived therefrom that the Designating Party in good faith believes is confidential. Materials designated "CONFIDENTIAL" may include, but is not limited to: corporate and strategic planning, marketing plans, competitive intelligence reports, sales projections and competitive strategy documents, documents that contains the identity of actual or prospective customers, suppliers, distributors of the Designating Party, technical data, research and development data, proprietary or confidential information used by the Designating Party in or pertaining to its trade or business, which information the Designating Party believes in good faith has competitive

1 value, but which is not generally known to others and which the Designating Party  
2 would not normally reveal to third parties except in confidence, or has undertaken  
3 with others to maintain in confidence, and information which the Designating Party  
4 believes in good faith falls within the right to privacy guaranteed by the laws of the  
5 United States or California. The fact that an item or category is listed as an example  
6 in this or other sections of this Protective Order does not, by itself, render the item or  
7 category discoverable.

8 **b.** The term “ATTORNEYS’ EYES ONLY” shall mean and include those documents,  
9 portions of documents, answers to interrogatories, responses to requests for  
10 admission, depositions, affidavits, expert reports, legal briefs or memoranda, and  
11 information derived therefrom which the Designating Party in good faith believes is  
12 confidential that, if disclosed to the receiving party, might cause competitive harm to  
13 the Designating Party. Information and material that may be subject to this  
14 protection includes, but is not limited to, financial statements, proprietary technical  
15 and/or research and development data, documents related to intellectual property in  
16 development or which is the subject of a non-public application, financial, marketing  
17 and other sales data (such as actual or prospective customer lists, actual or  
18 prospective vendor lists, purchase prices, and sales pricing), trade secrets,  
19 proprietary items or information, and/or information having strategic commercial  
20 value pertaining to the Designating Party’s trade or business. Additionally, relevant  
21 documents related to the individual employment or employment related disclosures  
22 shall be made pursuant to “ATTORNEYS’ EYES ONLY” designation to protect the  
23 privacy of these individuals.

24 2. The term “documents” shall include all material within the meaning of the  
25 federal rules of procedure.

26 3. Each party to this litigation may designate any documents, things,  
27 interrogatory answers, deposition testimony, or other information which it has provided or  
28 which a third-party has provided as “CONFIDENTIAL” and/or “ATTORNEYS’ EYES

1 ONLY” in accordance with this Protective Order. The party designating such information  
2 as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” shall be known as the  
3 “Designating Party.” In designating documents or information as “CONFIDENTIAL”, the  
4 Designating Party’s counsel shall make a good faith determination that the information  
5 warrants protection under Rule 26(c) of the Federal Rules of Civil Procedure. Before  
6 designating documents or information as “ATTORNEYS’ EYES ONLY” the Designating  
7 Party’s counsel shall make a good faith determination that the information warrants  
8 protection under Rule 26(c) of the Federal Rules of Civil Procedure and warrants protection  
9 from disclosure to the party receiving the documents or information.

10 4. The term “Counsel” shall mean (i) the attorneys of record and their associates  
11 of TINGLEY PIONTKOWSKI LLP for Defendants and (ii) the attorneys of record and  
12 their associates of ONE LLP for Plaintiff. If any of the parties seek to substitute any of the  
13 law firms listed in this paragraph with another law firm or to add additional law firms, it  
14 shall notify the opposing party of the intended substitution or addition. The opposing party  
15 shall have seven (7) days from the date of notification in which to object to the disclosure  
16 of “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” to the intended substitute or  
17 additional law firm. If objection is timely made, no “CONFIDENTIAL” or  
18 “ATTORNEYS’ EYES ONLY” may be disclosed to said law firm unless otherwise agreed  
19 to by the parties or ordered by the Court. Prior to disclosure of “CONFIDENTIAL” or  
20 “ATTORNEYS’ EYES ONLY,” the substitute or additional law firm shall acknowledge in  
21 writing that it is familiar with and agrees to comply with and be bound by all provisions of  
22 this Protective Order.

23 5. All information designated as “CONFIDENTIAL” shall not be disclosed to  
24 anyone other than the parties, Counsel, the Court, and the Court’s personnel, as well as any  
25 experts, consultants, and translators retained by any party for this litigation. All persons  
26 other than Counsel, the parties, the Court, and the Court’s personnel in the instant action to  
27 whom “CONFIDENTIAL” is disclosed shall read this Protective Order in advance of such  
28

1 disclosure and agree in writing to be bound by its terms, in accordance with Paragraph 10  
2 of this Protective Order.

3 “CONFIDENTIAL” shall not be used for any purpose other than as is set forth in  
4 Paragraph 20 of this Protective Order unless and until such designation is removed either  
5 by agreement of Trial Counsel or by order of the Court.

6 6. All information designated as “ATTORNEYS’ EYES ONLY” shall not be  
7 disclosed to anyone other than the Court, the Court’s personnel, Counsel, as well as any  
8 experts, consultants, and translators retained by any party for this litigation. The experts,  
9 consultants, and translators who may view “ATTORNEYS’ EYES ONLY” cannot be  
10 employees or independent contractors of either Plaintiff or Defendant or any of Plaintiff’s  
11 or Defendant’s subsidiaries or affiliated companies. All persons other than Counsel, the  
12 Court, and the Court’s personnel in the instant action to whom “ATTORNEYS’ EYES  
13 ONLY” is disclosed shall read this Protective Order in advance of such disclosure and  
14 agree in writing to be bound by its terms, in accordance with Paragraph 10 of this  
15 Protective Order.

16 “ATTORNEYS’ EYES ONLY” shall not be used for any purpose other than as is set  
17 forth in Paragraph 20 of this Protective Order unless and until such designation is removed  
18 either by agreement of Counsel or by order of the Court.

19 7. With respect to documents designated as including “CONFIDENTIAL” or  
20 “ATTORNEYS’ EYES ONLY,” any person indicated on the face of the document to be its  
21 originator, author, or recipient may be shown the documents. Additionally, any document  
22 designated as including “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” may be  
23 shown to any employee of the Designating Party and/or the party that produced in this  
24 litigation the document so designated during the deposition of that employee if it is  
25 reasonably probable that the employee would have access to or knowledge of the  
26 information contained in that document.

27 8. Prior to disclosing any material designated as “CONFIDENTIAL” or  
28 “ATTORNEYS’ EYES ONLY” to any expert, consultant or translator retained by the non-

1 Designating party, Counsel for the non-Designating Party shall obtain from any such  
2 expert, consultant or translator an executed sworn statement in the form of Attachment A, a  
3 copy of which shall be served upon Counsel for the Designating Party prior to disclosure of  
4 any such material to the expert, consultant or translator. Disclosure of such information to  
5 any expert, consultant or translator shall not be deemed an act constituting a waiver of the  
6 confidentiality of the material disclosed.

7 The sworn statement will be served on all Counsel in a manner so that it is received  
8 by the Designating Party seven (7) days prior to disclosure. At that time, Counsel for the  
9 non-Designating Party shall also serve upon all Counsel the following information in  
10 writing for any such expert, consultant or translator: (i) the person's full name, address and  
11 telephone number; (ii) the person's present occupation; (iii) the identity of all employers  
12 (name, address and telephone number) of that person for at least the past five (5) years and  
13 the dates of such employment; and (iv) a description of the nature of any relationship  
14 (purpose and length of relationship) that the person has or has had with any of the parties to  
15 this litigation.

16 The Designating Party shall have seven (7) days from the date of service in which to  
17 object to the disclosure of "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" to the  
18 expert, consultant or translator. If objection is timely made, no "CONFIDENTIAL" or  
19 "ATTORNEYS' EYES ONLY" may be disclosed to said expert, consultant or translator  
20 unless otherwise agreed to by the parties or ordered by the Court.

21 9. In the event the producing party elects to produce documents and things for  
22 inspection rather than produce copies of documents, no marking need be made by the  
23 producing party in advance of the initial inspection. Thereafter, upon selection of specified  
24 documents for copying by the inspecting party, the producing party shall mark the copies of  
25 such documents as may contain protected subject matter with the appropriate  
26 confidentiality marking at the time the copies are produced to the inspecting party. Said  
27 marking shall not delay the production of the copies. Information obtained by counsel  
28 from initial review of documents, whether in written form or not, shall be maintained as



1 “CONFIDENTIAL” unless such information is produced without a designation of  
2 confidentiality.

3 10. Whenever a deposition taken on behalf of any party involves a disclosure of  
4 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” of any party:

5 a. Said deposition or portions thereof shall be designated as containing  
6 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” subject to the  
7 provisions of this Protective Order at the time the deposition is taken  
8 whenever possible; however, any party shall have until ten (10) days after  
9 receipt of the deposition transcript within which to designate in writing to the  
10 other party(ies) to the action those portions of the transcript designated  
11 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” and the right to make  
12 such designation shall be waived unless made within the ten (10) day period;

13 b. Any party shall have the right to exclude from attendance at said deposition,  
14 during such time as the “CONFIDENTIAL” or “ATTORNEYS’ EYES  
15 ONLY” is to be disclosed, every individual not entitled under the Protective  
16 Order to receipt of the information, excluding the deponent and the Court  
17 Reporter.

18 11. Nothing in this Protective Order shall bar or otherwise restrict any attorney  
19 herein from rendering legal advice to the attorney’s party-client with respect to this action,  
20 and in the course thereof, relying upon an examination of “CONFIDENTIAL” and/or  
21 “ATTORNEYS’ EYES ONLY”; provided, however, that in rendering such legal advice  
22 and in otherwise communicating with the party-client, the attorney shall not disclose any  
23 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” to anyone not authorized to  
24 receive such documents, things, materials or information pursuant to the terms of this  
25 Protective Order.

26 12. Any documents produced in discovery, answers to interrogatories, deposition  
27 transcripts, or other documents that are filed with the Court for any purpose and that  
28



1 incorporate information that is designated “CONFIDENTIAL” or “ATTORNEYS’ EYES  
2 ONLY” shall be filed in compliance with Local Rule 79-5.

3 13. Nothing in this Protective Order, or the taking of any action in accordance  
4 with the provisions of this Protective Order, or the failure to object thereto, shall be  
5 construed as a waiver or admission of any claim or defense of this action. Moreover, the  
6 failure to designate information in accordance with this Order and the failure to object to a  
7 designation at a given time shall not preclude the filing of a motion at a later date seeking  
8 to impose such designation or challenging the propriety thereof. The entry of this Order  
9 shall not be construed as a waiver of any right to object to the furnishing of information in  
10 response to discovery or to object to a requested inspection of documents or things, and,  
11 except as expressly provided, shall not relieve any party of the obligation of producing  
12 information in the course of discovery. This Order shall not in any way limit what the  
13 producing party may do with its own documents or information.

14 14. In the event anyone shall violate or threaten to violate the terms of the  
15 Protective Order, the aggrieved party may immediately apply to obtain injunctive relief  
16 against any such person violating or threatening to violate any of the terms of this Order,  
17 and in the event the aggrieved party shall do so, the respondent, subject to the provisions of  
18 this Order, shall not employ as a defense thereto the claim that the aggrieved party  
19 possesses an adequate remedy at law. The parties and any other person subject to the terms  
20 of this Order agree that this Court shall retain jurisdiction over it and them for the purpose  
21 of enforcing this Order.

22 15. In the event that any party disagrees at any stage of these proceedings with the  
23 designation of any information as “CONFIDENTIAL” or as “ATTORNEYS’ EYES  
24 ONLY,” the parties shall try first to resolve such dispute in good faith on an informal basis.  
25 If the dispute cannot be resolved, the party objecting to the confidentiality designation shall  
26 seek appropriate relief from the Court. Any motion seeking relief from the Court must  
27 comply with Local Rules 37-1 and 37-2, including the Joint Stipulation requirement.

1           16. Immediately after entry of final judgment, including appeals, or of dismissal in  
2 connection with this action, all documents and things or transcripts of depositions, together  
3 with all copies thereof, which have been designated as including "CONFIDENTIAL" or  
4 "ATTORNEYS' EYES ONLY" shall be returned to the respective party by which it was  
5 produced within thirty (30) days of the entry of final judgment.

6           17. The termination of proceedings in this action shall not thereafter relieve any  
7 person to whom "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" was disclosed  
8 from the obligation of maintaining the confidentiality of such information in accordance  
9 with the provisions of this Protective Order.

10           18. The parties may by written stipulation provide for exceptions to this Protective  
11 Order and any party may seek an order of this Court modifying or interpreting this  
12 Protective Order. No stipulation amending this Protective Order will have the force or  
13 effect of a Court order absent the Court's written approval of it.

14           19. Nothing in the foregoing provisions of this Protective Order shall be deemed  
15 to preclude any party from seeking and obtaining, on an appropriate showing, additional  
16 protection with respect to the confidentiality or relief from this Protective Order regarding  
17 matter designated as containing "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

18           20. "CONFIDENTIAL" and "ATTORNEYS' EYES ONLY" subject to this  
19 Protective Order shall be used by the party(ies) to whom it is produced solely and  
20 exclusively for purposes of the above-captioned litigation. All persons to whom  
21 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" are disclosed are hereby enjoined  
22 from using said information for any other purpose and are specifically enjoined from using  
23 said information for any other cases, proceedings, or disputes or for any commercial,  
24 business, competitive or other purpose whatsoever. Further, no person receiving or  
25 reviewing "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" shall disclose it or its  
26 contents to any person other than as provided in this Protective Order and for the purposes  
27 specified.

21. If any party or other person authorized under this Protective Order to receive material designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” receives a subpoena from a non-party to this Protective Order seeking production or other disclosure of such material, that party or person shall initially refuse to produce any such material and shall immediately give written notice to counsel for the party who produced such material identifying the material requested and enclosing a copy of the subpoena, thereby giving the producing party a reasonable opportunity to move to quash said subpoena.

Notwithstanding the foregoing, a party or other person who receives a lawfully issued subpoena or other process seeking production or other disclosure of material designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” must comply with that subpoena or process unless a court orders otherwise.

22. Each of the parties’ employees is bound by the terms of this Protective Order.


23. Upon final termination of the action, including appeals, or of dismissal in connection with this action, and at the written request of the Designating Party, all documents and things or transcripts of depositions, together with all copies thereof, which have been designated as including “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” shall be returned to the Designating Party (at the expense of the Designating Party) or in absence of a request, shall be destroyed by counsel for the non-designating party. . Upon request for the return of materials designated “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”, non-designating counsel shall certify compliance with this provision and shall serve such certification to counsel for the Designating Party not more than ninety (90) days after the written request to return Designated Materials. If no request to return the Designated Materials is made, then counsel for the non-designating party shall destroy all Designated Materials that he/she did not produce within one hundred and fifty (150) days after final judgment. Notwithstanding the provisions for return or destruction of materials designated “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”, each Counsel may retain its internal files of pleadings, correspondence, work product, and depositions that cite, refer to, or otherwise attach the Designated Materials , for archival purposes only

(which shall not be shared with Counsel's non-producing client or any non-producing third party, for any reason). The continuing nature of the obligations in this provision shall not apply to the Court or its personnel.

24. The termination of proceedings in this action shall not thereafter relieve any person to whom "CONFIDENTIAL INFORMATION" or "ATTORNEYS' EYES ONLY INFORMATION" was disclosed from the obligation of maintaining the confidentiality of such information in accordance with the provisions of this Protective Order. The continuing nature of the obligations in this provision shall not apply to the Court or its personnel.

IT IS SO ORDERED.

Dated: June 20, 2013

By:   
 Hon. Jean P. Rosenbluth

### **STIPULATION**

IT IS HEREBY STIPULATED by and among the parties, through their respective counsel, this Honorable Court consenting, that the foregoing Stipulated Protective Order may be entered in this action.

Dated: June 6, 2013

#### **ONE LLP**

By: /s/ Imran F. Vakil  
 Imran F. Vakil  
 Christopher W. Arledge  
 Peter R. Afrasiabi  
*Attorneys for Plaintiff, The Next  
 Solutions, Inc. d/b/a The Next Up and  
 TheNextUp.com*

Dated: June 6, 2013

#### **TINGLEY PIONTKOWSKI LLP**

By: /s/ Kevin W. Isaacson  
 Kevin W. Isaacson  
*Attorneys for Defendant Prosoftware  
 Technologies, LLC, Jatinder "Jay"  
 Khaira, and Qazafi "Kaz" Qureshi*

**ATTACHMENT A**

I, \_\_\_\_\_ hereby certify that I have read and am fully familiar with the terms of the Protective Order entered in *The Next Solutions Inc v. Prosoftware Technologies LLC et al*, Case No. SACV12-02147 BRO (JPR), and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of this Court.

I acknowledge that I am about to receive Confidential Information and/or Attorneys' Eyes Only Information in said action and certify my understanding that such Information is being provided to me pursuant to the terms and restrictions of the Protective Order. I understand that such Information, and any copies I make of any documentary material containing Confidential Information and/or Attorneys' Eyes Only Information, or any notes or other records that may be made regarding any such information, shall not be disclosed to others, except other persons that are identified in and have agreed to comply with and be bound by the terms of the Protective Order. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order.

Dated this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.